

## CHAPTER 46:10:05

### FAMILY SUPPORT SERVICES

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**46:10:05:00. Definitions.** Terms used in this chapter mean:

(1) “Coordinator,” an individual employed by an organized health care delivery system described in § 46:10:05:05.01, who provides service coordination through a plan required in § 46:10:05:03;

(2) “Department,” the Department of Human Services;

(3) “Division,” the Division of Developmental Disabilities;

(4) “Home,” the participant’s residence where family support services are provided;

(5) “Individualized service plan” or “ISP,” a written plan of services or supports for a participant, which is developed, implemented, reviewed, and modified according to the provisions of this chapter;

(6) “Organized Health Care Delivery System” or “OHCDS,” an entity certified by the division under the provisions of chapter 46:11:02 and meeting the requirements of this chapter to provide family support services;

(7) “Parent,” a participant’s biological, adoptive, or stepparent, or any relative who acts in a parental capacity on an extended or full-time basis;

(8) “Participant,” a person receiving services or supports under the provisions of this chapter;

(9) “Provider,” an OHCDS that provides services or other entity that provides supplies under the provisions of this chapter;

(10) “Supports,” paid or non-paid services that are used to enable an individual to access resources and information available to the individual in their community.

**Source:**

**General Authority:** SDCL 27B-2-26.

**Law Implemented:** SDCL 27B-2-26.

**Cross reference:** Criteria for designation as an OHCD. §46:10:07:03

**46:10:05:01. Local family support program.** ~~A local family support program provides services to families in a specified area as determined by the division. The program is coordinated by a local family support program coordinator who works with families who have a child with developmental disabilities with the intent to strengthen the family and enable the child to remain in the home. The local family support program coordinator shall develop a family support program plan according to § 46:10:05:03.~~ A local family support program provides services, supports, and other assistance through a coordinator to an individual who has a developmental disability and lives in a home. Services, supports, and other assistance available under the local family support program include:

(1) Providing information and referral to other available resources as needed;

(2) Providing service coordination;

(3) Providing advocacy services;

(4) Providing incontinence supplies if needed; and

(5) Providing financial assistance to purchase the following:

(a) Medications;

(b) Nutritional supplements;

(c) Mileage, lodging, and food costs incurred during travel to medical appointments;

(d) Fees for recreational activities; and

(e) Adaptive equipment.

**Source:** 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(3)(7).

**46:10:05:02. Statewide family support program.** ~~The statewide family support program is available to families who have a child with developmental disabilities and who are not receiving services from a local family support program. The statewide program does not provide service coordination to families. The program coordinator determines eligibility and authorizes payment for services and supports that are requested by eligible families. Transferred to § 46:10:05:05.02.~~

~~**Source:** 27 SDR 63, effective December 31, 2000.~~

~~**General Authority:** SDCL 27B-2-26(7).~~

~~**Law Implemented:** SDCL 27B-2-26(7).~~

**46:10:05:03. Local family support program plan.** ~~A plan must be developed by the local family support program coordinator and the consumer, the consumer's parent if the~~

~~consumer is under 18 years of age, or the consumer's guardian to identify and prioritize the family's needs within 30 days of initiation of services. The plan will be reviewed by the local family support program coordinator on a quarterly basis. The local family support coordinator will document the quarterly review and include recommendations regarding status of the plan. A plan must be submitted to the division for approval within 45 calendar days of initiation of services by the participant. The plan must identify and prioritize the participant's needs and must be developed with the participant, if able, the participant's parent or parents, if the participant is under 18, or the participant's court-appointed guardian, if any. The coordinator must review the plan quarterly and document the outcome of the review and any recommendations regarding the status of the plan. The plan will~~ must contain, ~~at a minimum, the following:~~

- (1) The type of services to be furnished;
- (2) The amount, the frequency, and duration of each service; ~~and~~
- (3) Who is responsible to provide the service-; and
- (4) At least one goal and any services related to attainment of that goal.

**Source:** 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(3)(7).

**46:10:05:04. Local family support provider.** A local family support provider must ~~be approved by~~ have a provider agreement with the division and be an OHCDs. ~~A local family support provider must have a Medicaid number exclusively for family support services and supports. A local family support provider may administer more than one family support program.~~

**Source:** 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(7).

**46:10:05:05. ~~Eligibility~~ Local family support eligibility.** ~~A family~~ An individual must meet the following criteria to be eligible to receive services under the local family support ~~services program:~~

- (1) ~~The family resides in the State~~ individual is a resident of South Dakota;
- (2) ~~The family includes a child~~ individual is under the age of 22 ~~who and~~ has a developmental disability as defined in SDCL 27B-1-18 or is a child aged birth through two years ~~of age and~~ who has been identified by the Department of Education as needing prolonged assistance as defined in § 24:05:24.01:15; and
- (3) ~~The consumer is under the age of 22;~~
- (4) ~~The consumer~~ individual, if under the age of 18, lives in a home with ~~natural, adopted, step family, or relatives who act in a parental capacity on an extended and full time basis~~ a parent as defined in subdivision 46:10:05:00(7) or a court-appointed guardian; and
- (5)(4) ~~The family expresses an intent for the consumer to remain living in the family's home~~ The home has no more than four non-related individuals living in that home who are receiving family support services.

Participant eligibility for the local family support program shall be reviewed by the coordinator at least biennially or upon receipt of any documentation which could potentially affect eligibility.

**Source:** 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(7).

**Cross reference:** Prolonged assistance defined. §24:05:24.01:15

**46:10:05:05.01. Organized health care delivery system.** To provide local family support services under this chapter, the OHCDs must meet the provisions pursuant to § 46:10:07:02.

Reimbursement for services may only be made for those services approved and authorized in the local family support program plan required in § 46:10:05:03.

**Source:**

**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(7).

**46:10:05:02. 46:10:05:05.02** **Statewide family support program.** ~~The statewide family support program is available to families who have a child with developmental disabilities and who are not receiving services from a local family support program~~ The statewide family support program is available to a family who has a child with a developmental disability and who is not receiving services from a local family support program. The statewide program does not provide service coordination to families. ~~The program coordinator~~ division determines eligibility and

authorizes payment for ~~services and supports~~ items and supplies that are requested by eligible families. Items and supplies include:

- (1) Incontinence supplies;
- (2) Nutritional supplements;
- (3) Adaptive equipment; and
- (4) Home modifications.

**Source:** 27 SDR 63, effective December 31, 2000. Transferred from § 46:10:05:02.

**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(3)(7).

**46:10:05:05.03. Statewide family support eligibility.** An individual must meet the following criteria to be eligible to receive items and services under the statewide family support program:

- (1) The individual is a resident of South Dakota;
- (2) The individual is under the age of 22 and has a developmental disability as defined in SDCL 27B-1-18 or is a child aged birth through two years of age who has been identified by the Department of Education as a child needing prolonged assistance as defined in § 24:05:24.01:15; and
- (3) The individual, if under the age of 18, lives in a home with a parent or a court-appointed guardian.

**Source:**



**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(7).

**Cross reference:** Prolonged assistance defined. § 24:05:24.01:15

**46:10:05:06. Notice of ineligibility.** ~~If the family support program coordinator determines that a family is ineligible, the coordinator shall notify the family in writing of the reason for ineligibility within 60 days upon receipt of the completed application. The notice shall include the process of appeal pursuant to § 46:10:05:16.~~ The coordinator shall determine eligibility for any individual applying for the local family support program within 45 calendar days of initiation of services. The division shall determine eligibility for any individual applying for the statewide family support program within 14 calendar days of receipt of the application.

The coordinator or the division shall send a written notice to the individual or the individual's parent or court-appointed guardian informing the individual of the results of the eligibility determination. If the individual is determined to be ineligible, the notice shall state the reason the individual is not eligible and the process for appealing the decision.

**Source:** 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-25, 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-25, 27B-2-26(4)(7).

**Cross reference:** Appeal of ineligibility or discontinuation of services or benefits. §  
46:10:05:16

**46:10:05:07. Services and supports.** Services and supports are based on each family's participant's needs as identified through an assessment process and must be agreed to by the ~~consumer participant, or the consumer's participant's~~ parent ~~if the consumer is under 18 years of age, or the consumer's~~ or court-appointed guardian and the ~~local family support~~ coordinator. The services and supports provided by the local family support program must be ~~documented on the form, (DHS DDD FS POC) Family Support Plan, provided by the division~~ documented on the participant's ISP and submitted to the division for approval.

**Source:** 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(3)(7).

**46:10:05:08. ~~Funding approval~~ Prior authorization required.** ~~Any purchase of services or support must be approved by the family support program coordinator prior to the purchase of the services or support. Services and support may not be used to supplant other services and support available to the family. The coordinator must approve the purchase of any services or supports covered under this chapter for the local family support program before the services or supports are purchased.~~

The division must approve the purchase of any items or supplies covered under this chapter for the statewide family support program before the items or supplies are purchased.

**Source:** 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(3)(7).

**46:10:05:08.01. Funding availability.** Any services provided under this chapter are contingent upon availability of funds. Any individual under the age of 22 determined eligible for local family support program services, but due to a lack of available funds cannot be served, shall be referred to the statewide family support program.

**Source:**

**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(7).

**46:10:05:09. Non-covered expenses.** The following items are not covered ~~by family support funds:~~

- (1) Incontinence supplies for a child under 2 1/2 years of age;
- (2) Vehicles; ~~and~~
- (3) Purchases made without the prior approval ~~from~~ of the ~~family support coordinator for~~ the local family support program or the division for the statewide family support program; and
- (4) Any services, items, or supplies eligible for payment under another payment source.

**Source:** 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(7).

**46:10:05:10. Safety assurance.** The local family support program plan must assure that services funded by the local family support program are provided in a safe environment. The division shall provide a checklist of safety guidelines for the home and community resources. The coordinator shall complete the safety checklist annually. The coordinator shall identify safety concerns and provide information to the participant and the participant's family to help alleviate those concerns.

**Source:** 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(4)(7).

**46:10:05:11. Local family support program review.** ~~The division shall conduct an on-site annual review of each local family support program. A five percent sample shall be reviewed to determine if the families continue to meet eligibility requirements and if the services are provided according to the family support program plan. The division shall provide the local family support provider with a statement of deficiencies, if any, with recommendations for program changes following the survey~~ Repealed.

**Source:** 27 SDR 63, effective December 31, 2000.

**General Authority:** ~~SDCL 27B-2-26(7).~~

**Law Implemented:** ~~SDCL 27B-2-26(7).~~

**46:10:05:12. ~~Survey for compliance with rules~~ Review of an OHCDs.** The division shall ~~survey~~ review each local family support program ~~semiannually~~ the OHCDs biennially to determine compliance with the requirements of this chapter. The division shall ~~inspect practices~~ and review services provided for at least five percent of the ~~consumers~~ participants. The division shall provide the ~~local family support provider~~ OHCDs with a statement of deficiencies, if any, ~~with~~ and recommendations for compliance following the ~~survey~~ review.

**Source:** 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(3)(4)(7)(10).

**46:10:05:13. ~~Statement of deficiencies and plans of corrections~~ plan of correction.**

~~The division shall send a statement of deficiencies to the local family support provider within 30 calendar days following the survey. The provider shall submit a plan of correction for each deficiency with specific measures to be taken and date of completion to the division within 30 calendar days after receipt of the statement of deficiencies. If the plan is not received by the division within 30 calendar days, the division shall notify the provider in writing that its provider status will be revoked by the division if the plan is not received within 15 days. The division may reject the plan of correction if there is no evidence the plan will cause the provider to attain compliance with this chapter. If the OHCDs fails to be in compliance, a statement of deficiencies noting areas of noncompliance shall be issued by the division within 30 calendar days following the review. The OHCDs must submit a plan of correction to the division within 30 calendar days of receipt of the statement of deficiencies. The plan of correction shall detail the action to be taken~~

to correct the deficiencies and the date by which the corrections will be made. The plan of correction is subject to acceptance or rejection in whole or in part by the division. The division shall notify the OHCDS within 30 calendar days of receipt of the plan of correction of its decision regarding approval of the plan of correction and status of the provider agreement.

Failure to comply with the plan of correction will result in termination of the provider agreement with the department.

**Source:** 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-26(3)(4)(7)(10).

**46:10:05:14. Appeal of revocation of provider-status.** ~~A provider may appeal the revocation of provider status to the secretary of the DHS by notifying the DHS by certified mail within ten calendar days of receipt of notification of the action and requesting a fair hearing pursuant to SDCL chapter 1-26. The time and place of hearing and any time extension shall be followed as described in § 46:10:05:17~~Repealed.

**Source:** 27 SDR 63, effective December 31, 2000.

**General Authority:** ~~SDCL 27B-2-25, 27B-2-26(7).~~

**Law Implemented:** ~~SDCL 27B-2-25, 27B-2-26(7).~~

**46:10:05:15. ~~Termination~~ Discontinuation of services or benefits.** Services ~~shall terminate when~~ or payment of items or supplies may be discontinued if one of the following occurs:

- (1) ~~The consumer participant no longer resides in the family home~~ meets eligibility criteria pursuant to § 46:10:05:05 or 46:10:05:05.03;
- (2) ~~The consumer turns 22 years of age;~~
- (3) A misuse of funds by the participant or the participant's parent or court-appointed guardian is substantiated; or
- ~~(4)~~(3) There is a request to terminate services by the consumer participant or the participant's parent or court-appointed guardian, the consumer's parent if the consumer is under the age of 18, or the consumer's guardian.; or
- (4) Funding for the local family support or statewide family support programs become unavailable.

~~If termination occurs pursuant to subdivisions (1), (2), or (3) of this section, the family support coordinator shall provide written notice of the reason for termination to the family ten calendar days prior to termination of services. The notice shall include the process of appeal pursuant to § 46:10:05:16. If services or benefits are going to be discontinued, the coordinator for the local family support program or the division for the statewide family support program, shall provide a written notice to the participant or the participant's parent or court-appointed guardian, ten calendar days before the service or benefits are to be discontinued. The notice shall contain the reason for the discontinuance and the process for appeal pursuant to § 46:10:05:16.~~

**Source:** 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-25, 27B-2-26(7).

**Law Implemented:** SDCL 27B-2-25, 27B-2-26(4)(7).

**46:10:05:16. Appeal of ineligibility or ~~termination~~ discontinuation of services or benefits.** ~~A consumer a consumer's participant or participant's parent if the consumer is under 18 years of age, or a consumer's or court-appointed guardian may appeal the family support program's division's decision regarding ineligibility or termination discontinuation of services to the division or benefits by requesting a fair hearing. An appeal shall be made in writing to the division within 30 days of receipt of the notice regarding termination or ineligibility. The division shall provide a determination within 30 days of receipt of the request for appeal. A consumer, a consumer's parent if the consumer is under 18 years of age, or a guardian dissatisfied with the division's determination regarding eligibility or termination of services may request a fair hearing by notifying the DHS in writing within 30 days of receipt of the division's decision. When a termination is being appealed, the consumer shall continue receiving services until a decision is reached after a hearing pursuant to SDCL chapter 1-26. A request for a fair hearing must be made in writing within 30 calendar days after receiving the division's decision. The department shall conduct the hearing pursuant to the provisions of SDCL chapter 1-26.~~  
The department may not pay for legal fees for representing the parent, legal guardian, provider, or participant at a fair hearing pursuant to this section.

**Source:** 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-25, 27B-2-26(7).



**Law Implemented:** SDCL 27B-2-25, 27B-2-26(4)(7).

**46:10:05:17. Time and place of hearing -- Time extension.** A fair hearing, pursuant to SDCL chapter 1-26, by an impartial hearing officer shall be held within 90 calendar days after receipt for a request by the appellant participant or the participant's parent or court-appointed guardian. The impartial hearing officer shall set a time and place for the hearing to be held at the earliest reasonable time. ~~Time extensions may be provided by the impartial hearing officer or at the request of any of the parties involved and upon agreement of both parties to a specific extension of time.~~ The hearing examiner may continue the hearing at the request of any of the parties involved. A request for a continuance must be made at least 10 calendar days prior to the date of the hearing.

**Source:** 27 SDR 63, effective December 31, 2000.

**General Authority:** SDCL 27B-2-25.

**Law Implemented:** SDCL 27B-2-25.